IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4650 OF 2004

Pramod Ganpati Jangam and another Petitioners

versus

The Registrar,
High Court, Appellate Side,
and another Respondents

Mr.Nitin Pradhan with Ms.Shubhada Khot, adv. for petitioners.

R.D.Rane, Additional G.P. for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 10th December 2004

PC :

1. The petition is filed by two employees of subordinate judiciary. They are aggrieved by the action of authorities in allowing the representation made by one S.D.Sarvade and S.P.Patil. The grievance is that these representations have been allowed erroneously and wrongfully, and therefore, the authorities be directed to consider the petitioners' application for appointment to the post of Stenographer

(Lower Grade) on merit as per recruitment rules pertaining to Class-III and Class-IV services in subordinate judiciary.

2. Mr.Pradhan, learned counsel appearing in support of this petition submits that in pursuance of representations made by four Junior Clerks for promotion to the post of Stenographer (Lower Grade) in Sangli District Court, process was initiated. Four additional Stenographers' posts were created by the Law and Judiciary Department of the State. The Advisory Committee shortlisted four names on the basis of seniority. Although petitioners were confirmed in the service as Junior Clerks, they did not possess requisite qualifications of English Stenographer, therefore, they were not called for interview. It appears that appointment orders were issued only to three candidates out of four shortlisted candidates. The appointments were made as under:-

(i) Mr.N.P.Kulkarni came to be promoted and appointed as Stenographer (Lower Grade), in the Court of the learned Civil Judge, Junior Division, Atpadi;

(ii) Shri S.D.Sarwade was promoted and appointed as Stenographer (Lower Grade) in the Court of Joint Civil Judge, Junior Division, Shirala and;

(iii) Shri S.P.Patil was promoted and appointed as a Stenographer (Lower Grade) in the Court of the Civil Judge, Junior Division, Kavathe-Mahankal.

3. It is contended that the said appointments were temporary as per GR dated 12th January 2001. It is petitioners' case that three newly created temporary posts having been filled, the select list is exhausted.

4. It is contended that in the aforesaid list the candidate Mr.S.P.Patil was the junior most Stenographer (Lower Grade). On account of disbanding of the Court of learned 4th Joint Civil Judge, Senior Division, Sangli, Mr.Patil came to be reverted back and appointed as Junior Clerk. It is contended that Mr.Patil has not been confirmed on the post of Junior Clerk. According to the petitioner, Mr.Patil was entitled to be confirmed as Junior Clerk.

5. It is contended that another list of three eligible candidates for the posts of Stenographers came to be prepared by the Advisory Committee. Two out of above three persons have been appointed as Stenographers (Lower Grade) from time to time on leave vacancy. The third

person has not been given any appointment.

6. There was an amendment in Paras 580, 583, 577(iii), Appendix-A, Rule 3(ii) of Chapter-XXXI of the Civil Manual, 1986, Part-I. It is contended that there is no proper maintenance of promotion list/waiting list and the petitioners cite several instances. The petitioners citing these instances in a representation made separately to the learned District Judge, Sangli requested that as and when post of Stenographer (Lower Grade) is to be filled, petitioners be appointed on seniority and merit basis. It is their case that they are senior to the candidates in the list of 30th January 2001 (four candidates). It appears that when this representation was pending, a vacancy arose in the post of Stenographer (Lower Grade) in the office of District Judge, Sangli.

7. It is the grievance of petitioners that on 23rd September 2002 one S.D.Sarvade, who is junior to the petitioners and whose name was reflected in the waiting list/promotional list dated 30th January 2001, came to be temporarily appointed on the aforesaid vacant post. It is contended that this appointment was temporary and

subject to the representation made by petitioners. The petitioners submit that their representation was referred to the Additional Registrar (Administration) of this Court.

8. The petitioners submit that they learnt that in the meeting of the Advisory Committee waiting list prepared on 30th January 2001 and waiting list prepared on 30th March 2001 was scrapped. One A.S.Umrani, retired from service as Clerk-cum-Stenographer. The Advisory Committee called for three eligible Junior Clerks having requisite qualification as per gradation list for shorthand test and oral interviews. This was some time in June 2003. Petitioner no.1 as well as one S.B.Joshi were called for test/interview. They successfully passed said test/interview. However, by office order No.148/2003 S.B.Joshi came to be appointed as Clerk-cum-Stenographer on account of his seniority. The said appointment was on clear vacant post. It appears that Mr.Joshi was posted at Islampur in new vacancy vide Office Order No.160/2003. This order was issued on 30th June 2003. Being aggrieved by this temporary order in favour of Mr.Joshi, Mr.S.D.Sarvade whose name appeared in the waiting list of 30th January 2001 approached Registrar of

this Court by way of representation. Similarly, Mr.S.P.Patil also made a representation to the learned District Judge on 4th July 2003 to set aside the said office order.

9. Petitioner no.1 was promoted as Stenographer (Lower Grade) and appointed in the Court of Civil Judge, Junior Division, Miraj after following due procedure by office order dtd. 17th October 2003. It appears that representations of Mr.Sarvade and Mr.Patil have been allowed. The apprehension is that petitioners would stand reverted and the office order issued in their favour would be cancelled. It is contended that petitioner no.2 also came to be appointed as Stenographer in a leave vacancy in the Court of Civil Judge, Junior Division, Jath on 5th November 2003.

10. In the light of the aforesaid developments, petitioners have approached this Court invoking it’s jurisdiction under Article 226 of Constitution of India. They seek a Writ of Mandamus directing the respondents to consider the representations made on 19th October 2002 in the light of the relevant Recruitment rules and post them appropriately on merit as well as

seniority basis to the promotional posts of Stenographer (Lower Grade). The aforesaid submissions proceed on the basis that earlier select list is exhausted and therefore no candidate from the same is eligible. There is no question of picking up anybody from the same.

11. In answer to this petition an affidavit has been filed by Registrar (Legal) of this Court.

12. We have heard Mr.Pradhan for petitioners and Mr.Rane, AGP for respondents. We have perused annexures to the petition as well as affidavit filed by respondents.

13. It is true that the representations made by the aforesaid persons namely Sarvade and Patil were allowed. This was because of the fact that it was open for the District Judge to take necessary tests of qualified candidates for giving them promotions to the posts of Stenographers (Lower Grade). It is pointed out to us that there are different technical qualifications provided for the post of Stenographer like passing of shorthand test of 100 w.p.m. and passing of typing test @ 40 w.p.m. under Rule 8. The developments leading

to the representations are set out on affidavit. It was pointed out to us that at the relevant time petitioners were not qualified for appointment to the post of Stenographer (Lower Grade) as they had not passed shorthand test. Thus, petitioners did not appear for the test in the year 2001 when Mr.Sarvade and Mr.Patil and two others were selected for promotion. It is pointed out that all four clear vacant posts of Stenographers (Lower Grade) have been filled up. It was pointed out to us that Mr.Sarvade and Mr.Patil were not in the waiting list but had actually worked as Stenographers (Lower Grade) in clear vacancies and were reverted back to the posts of Junior Clerks due to non availability of posts. Therefore, only after absorption of such candidates that the petitioners' case could have been considered for promotion.

14. From the record, it is clear that petitioners representations could not be considered favourably in the light of developments pertaining to Mr.Sarvade and Mr.Patil.

15. In the light of the stand taken on affidavit, it is clear that there is no substance

in the grievance of petitioners and they could not be considered for promotions at the relevant time for valid reasons. This is not a fit case for interference in writ jurisdiction. However, we clarify that as and when vacancy arises, the petitioners would be entitled to apply and their cases would be considered by the respondents in accordance with the rules without in any manner being influenced by developments noted above. Petition stands disposed of.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)

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